

ESTTA Tracking number: **ESTTA377412**

Filing date: **11/08/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92052164
Party	Plaintiff Nutri Asia, Inc.
Correspondence Address	KATHERINE M. BASILE NOVAK DRUCE + QUIGG LLP 555 MISSION STREET, 34TH FLOOR SAN FRANCISCO, CA 94105 UNITED STATES trademark@novakdruce.com, katherine.basile@novakdruce.com, jeff.morgan@novakdruce.com,
Submission	Other Motions/Papers
Filer's Name	Jeffrey Morgan
Filer's e-mail	trademark@novakdruce.com
Signature	/jeffrey morgan/
Date	11/08/2010
Attachments	11.8.10 Motion to Correct Name.pdf (16 pages)(916134 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

NUTRI-ASIA, INC.)	
)	
Petitioner,)	
)	Cancellation No.: 92052164
v.)	
)	Registration No.: 3,334,648
UNIVERSAL FOOD PUBLIC)	
COMPANY LIMITED)	Mark: UFC
)	
Registrant.)	

CONSENT MOTION TO CORRECT NAME OF PETITIONER

Petitioner Nutri Asia, Inc., with the consent of Registrant Universal Food Public Company Limited as shown below, hereby moves the Board for an order correcting the name of Petitioner in this proceeding to “Nutri-Asia, Inc.” and in support of this motion would show the following:

1. The Petition for Cancellation was filed on March 4, 2010 with the Petitioner incorrectly named as Nutri Asia, Inc.
2. The correct legal name of the Petitioner is Nutri-Asia, Inc. (with a hyphen between the words “Nutri” and “Asia”). Attached as Exhibit “A” is a true and correct copy of the Certificate of Filing of the Articles and Plan of Merger, dated February 13, 2009, which was filed with the Republic of the Philippines Securities and Exchange Commission. This document shows that the surviving corporation after the merger is to be legally known as Nutri-Asia, Inc.
3. Counsel for the parties have conferred regarding this matter and are in agreement that Petitioner’s name should be corrected in the records of the United States

Patent and Trademark Office. In addition to this remedial motion, Petitioner will also file a correction to the assignment records for UFC (Reg. No. 3,730,682) and UFC (App. Ser. No. 77/626,720), which have been asserted by Petitioner in the Petition for Cancellation.

Further, Petitioner asserts that the filing of the petition to cancel in the name of Nutri Asia, Inc. was an error and that Nutri-Asia, Inc. is the real party-in-interest in this proceeding. Registrant consents to Petitioner's Motion to Correct the Name of Petitioner.

4. The Board has previously recognized that the name of a petitioner may be amended to correct an inadvertent error in the manner in which the name and/or entity was set forth in a petition to cancel. *See Rough Riders M/C v. Michael Mancusi and Rough Riders, Inc.*, 2003 WL 21653641 (TTAB 2003). Although *Rough Riders* is not a precedential decision of the Board, it is persuasive authority for the proposition that a party may correct an error in the party's name in cases where the error is one of form and there is no substitution or addition of a party.

For the above reasons, Petitioner respectfully requests that the Board enter an order granting Petitioner's motion to correct its name to Nutri-Asia, Inc. for all purposes in this proceeding. Petitioner further requests that the Board deem its Petition for Cancellation filed on March 4, 2010 and the parties' Stipulated Protective Order approved on July 30, 2010 as properly of record in this proceeding with the name of Petitioner to read as "Nutri-Asia, Inc.", without further amendment.

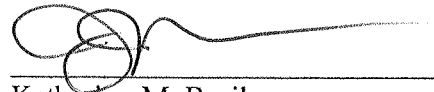
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Dated: November 8th, 2010



Katherine M. Basile
NOVAK DRUCE + QUIGG LLP
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San Francisco, California 94105
(415) 814-6161
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Attorneys for Petitioner
Nutri-Asia, Inc.



Ilene B. Tannen
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JONES DAY
222 East 41st Street
New York, NY 10017-6702
(212) 326-3939

Attorneys for Registrant
Universal Food Public Company Limited

EXHIBIT A



REPUBLIC OF THE PHILIPPINES
SECURITIES AND EXCHANGE COMMISSION
SEC Building, EDSA, Greenhills
City of Mandaluyong, Metro Manila

SEE TO TRUE & CORRECT COPY ON FILE
PAGE OF PAGES
MARIANO L. CELIS II
Date:

13 FEB 2009

CERTIFICATE OF FILING OF THE
ARTICLES AND PLAN OF MERGER

KNOW ALL PERSONS BY THESE PRESENTS:

THIS IS TO CERTIFY that the Articles and Plan of Merger
executed on January 14, 2009 by and between:

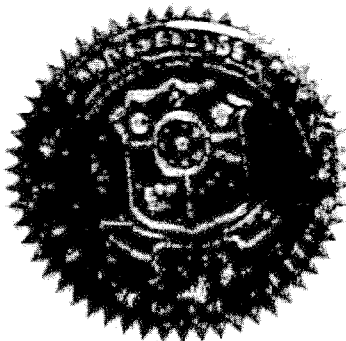
NUTRI-ASIA, INC.
(Surviving Corporation)

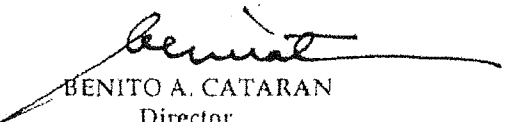
and

UFC PHILIPPINES, INC.
(Absorbed Corporation)

copy annexed, approved by a majority vote of the Board of Directors
and by the vote of the stockholders owning or representing at least
two-thirds of the outstanding capital stock of constituent corporations on
October 10, 2008 signed by the Presidents, certified by their respective
Corporate Secretary, whereby the entire assets and liabilities of UFC
PHILIPPINES, INC. will be transferred to and absorbed by NUTRI-ASIA,
INC. was approved by this Office on this date pursuant to the provisions of
Sections 76 to 80 of the Corporation Code of the Philippines, Batas Pambansa
Blg. 68, approved on May 1, 1980, and attached to the other papers
pertaining to said corporations.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the
seal of this Commission to be affixed at Mandaluyong City, Metro Manila,
Philippines, this 17th day of February, Two Thousand Nine.




BENITO A. CATARAN
Director
Company Registration and Monitoring Department





REPUBLIC OF THE PHILIPPINES
SECURITIES AND EXCHANGE COMMISSION
SEC Building, EDSA, Greenhills
City of Mandaluyong, Metro Manila

SEC TO TRADE & DIRECT COPY ON FILE
PAGE 1 OF 1 PAGES
ARIANO L. CELIS II
Date: 13 FEB 2009

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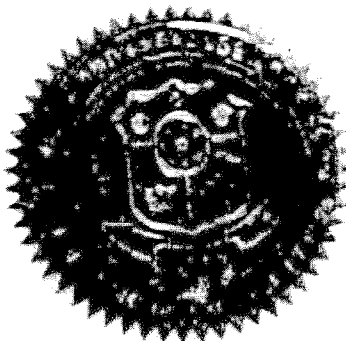
NUTRI-ASIA, INC.
(Surviving Corporation)

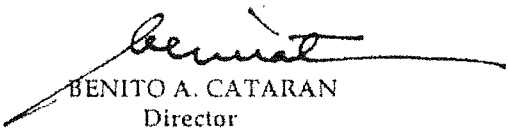
and

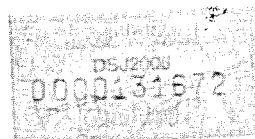
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Philippines, this 17th day of February, Two Thousand Nine.




BENITO A. CATARAN
Director
Company Registration and Monitoring Department



COVER SHEET

13 FEB 2011

A 1 9 9 6 2 3 1 9
S.E.C. Registration Number

NUTRI-ASIA, INC.
[Empty boxes for address continuation]

(Company's Full Name)

12 / F Centerpoint Bldg. J. Vardas
Ave. cor. Garnet St. Ortigas
(Business Address : No. Street City / Town / Province)

Atty. Mariano L. Celis II
Contact Person

631-8621
Company Telephone Number

1 2 3 1
Month Day Fiscal Year

Plan of Merger
FORM TYPE

1st Wed of Sept.
Month Day Annual Meeting

[Empty box]

Secondary License Type, if Applicable

[Empty box]
Dept. Requiring this Doc.

[Empty box]
Amended Articles Number/Section

[Empty box]
Total No. of Stockholders

Total Amount of Borrowings
Domestic

Foreign

To be accomplished by SEC Personnel concerned

[Empty box]
File Number

LCU

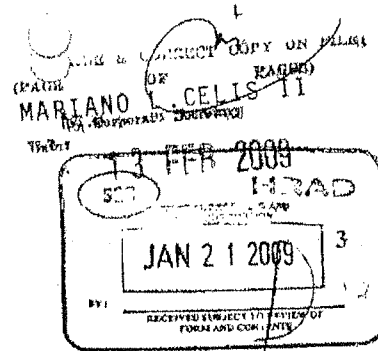
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Document I.D.

Cashier

STAMPS

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ARTICLES OF MERGER
OF
NUTRI-ASIA, INC.
and
UFC PHILIPPINES, INC.



KNOW ALL MEN BY THESE PRESENTS:

Pursuant to the provisions of Section 78 of the Corporation Code of the Philippines (hereinafter referred to as the "Corporation Code"), the undersigned corporations have each adopted and hereby executed the following Articles of Merger for the purpose of Merging **UFC Philippines, Inc.** into **Nutri-Asia, Inc.** ("Constituent Corporations").

1. **Plan and Agreement of Merger**

The Plan of Merger which is attached hereto as **Annex "A"** was approved by the affirmative vote of the stockholders owning or representing at least seventy five percent (75%) of the outstanding capital stock of the Constituent Corporations at separate meetings held on October 10, 2008, duly called for the purpose in accordance with and in manner prescribed in Sections 76 to 77 of the Corporation Code.

DO NOT WRITE IN THESE SPACES
 (PAGE 2)
 MARIANO L. CELIS II
 (Corporate Secretary)
 Dated

13 FEB 2009

2. **Total Number of Outstanding Shares**

- a. The total number of outstanding shares of each of the Constituent Corporations are:

<u>Name of Corporation</u>	<u>Total Outstanding Shares</u>	<u>Par Value Per Share</u>
Nutri-Asia, Inc.	6,300,000	P 10
UFC Philippines, Inc.	100,000	P 100

- b. The number of outstanding shares of the Constituent Corporations voting in favor of the Merger in the special meetings of stockholders duly called for the purpose are:

<u>Name of Corporation</u>	<u>Total Outstanding Shares</u>	<u>Par Value Per Share</u>
Nutri-Asia, Inc.	6,300,000	P 10
UFC Philippines, Inc.	100,000	P 100

- c. None of the outstanding shares of the Constituent Corporations voted against the Merger.

9

CERTIFIED TRUE & CORRECT COPY ON FILE
(PAGE 07 OF 07 PAGES)
MARIANO L. CELIS II
Asst. Corporate Secretary
Date: 13 FEB 2009

IN WITNESS WHEREOF, the duly authorized representatives of the Constituent Corporations have executed these Articles of Merger this _____ day of _____ in Pasig City, Philippines.

NUTRI-ASIA, INC.

By:

EMMANUEL RAMON C. LORENZANA
President

MARIANO L. CELIS II
Asst. Corporate Secretary

UFC PHILIPPINES, INC.

By

EMMANUEL RAMON C. LORENZANA
President

MARIANO L. CELIS II
Acting Corporate Secretary

Signed in the Presence of:

NOTARY PUBLIC
MARIANO L. CELIS II
Notary Public for the Philippines

13 FEB 2009

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
) S.S.

QUEZON CITY

On this _____ day of 14 JAN 2009, 2007, in QUEZON CITY
Philippines, personally appeared before me, a Notary Public for and the City of
_____, Philippines the following:

<u>Name</u>	<u>Comm. Tax Cert. No.</u>	<u>Place/Date Issued</u>
Emmanuel Ramon C. Lorenzana	TIN No. 101-777-042	
Mariano L. Celis II	01581107 TIN No. 117-000-352	06-05-2008/Pasig City

both known to me and to me known to be the same persons who executed the foregoing Articles of Merger and they acknowledged to me that the same is their free and voluntary act and deed and the free and voluntary act of the Corporations represented therein.

WITNESS MY HAND AND SEAL on the date and at the place first above written.

Doc. No. 192
Page No. 59
Book No. 11
Series of 2008

ATTY. JOEL G. GORDOLA
NOTARY PUBLIC
UNTIL DECEMBER 31, 2009
PTR No. 0806362-1705/09 D.C.
IBP No. 686766 POLL No. 25103

NOTARIAL COPY ON FILE
MARIANO L. CELIS
Notary Public
Date

PLAN OF MERGER 13 FEB 2009

KNOW ALL MEN BY THESE PRESENTS:

This Plan of Merger to be implemented by and between:

NUTRI ASIA, INC., a corporation organized and existing by virtue of Philippine laws, having its principal office at 12th Floor, Centerpoint Building, J. Vargas Avenue corner Garnet Street, Ortigas Center, Pasig City, duly represented by its President, Emmanuel Ramon C. Lorenzana, hereinafter referred to as NAI;

- and -

UFC PHILIPPINES, INC., a corporation organized and existing by virtue of Philippine laws, having its principal office at 12th Floor, Centerpoint Building, J. Vargas Avenue corner Garnet Street, Ortigas Center, Pasig City, duly represented by its VP-Treas Genaro D. Reyes, hereinafter referred to as UFC.

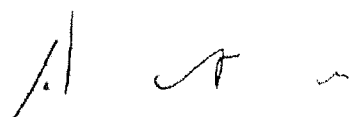
RECITALS

WHEREAS, NAI is a corporation duly registered with the Securities and Exchange Commission (SEC), and has an authorized capital stock of One Hundred Million Pesos (P100,000,000.00) divided into Ten Million (10,000,000) shares with a par value of Ten Pesos (P10.00) per share. The total capital stock issued and outstanding of NAI amounts to Sixty Three Million Pesos (P63,000,000.00).

WHEREAS, UFC is a corporation duly registered with the SEC, 100% of the outstanding capital of which is owned by NAI. UFC has an authorized capital stock of Ten Million Pesos (P10,000,000.00) divided into One Hundred Thousand (100,000) shares with a par value of One Hundred Pesos (P100.00) per share, all of which have been issued and outstanding.

WHEREAS, a merger between NAI and the UFC, with NAI as the surviving corporation, is desirable and advantageous to NAI and the UFC and their respective shareholders for the following business reasons:

1. The integration of the administrative facilities of the constituent corporations will result in economies of scale and efficiency of operations;
2. The consolidation of the assets of the constituent corporations will allow the procurement of financing and credit facilities under more favorable terms; and



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(PAGE OF PAGE)
MARIANO L. CELIS II
13 FEB 2009

3. The merger will make possible the more productive use of the properties of the constituent corporations.

WHEREAS, the Parties desire to merge pursuant to Sections 76 to 80 of Batas Pambansa Blg. 68, otherwise known as the "Corporation Code of the Philippines".

For the reasons set forth above, and in consideration of the mutual covenants and premises hereto, the merger between NAI and UFC has been approved by the respective Board of Directors of the constituent corporations and their respective stockholders, pursuant to the provisions of Sections 76 to 80 of the Corporation Code of the Philippines.

The terms and conditions of such merger and the method of carrying it into effect are prescribed hereunder:

TERMS OF THE MERGER

1. On January 1, 2009 or upon approval by the SEC of the Parties' Articles of Merger and its issuance of the Certificate of Filing of the Articles of Merger whichever comes later (Effective Merger Date) and the issuance by the Bureau of Internal Revenue (BIR) of a ruling that the merger complies with Section 40 (C) (2) of the National Internal Revenue Code of 1997, UFC shall be merged into NAI, which shall be the surviving corporation.

2. Upon the Effective Merger Date, all the rights, business, assets and other properties of UFC including, but not limited to, all real and personal properties, contractual rights, licenses, privileges, property rights, claims, bank deposits, stocks, accounts receivables, credit lines, supplies, equipment, motor vehicles and such other assets as shown in the audited balance sheet of UFC as of September 30, 2008, shall be conveyed, assigned and transferred to NAI.

It is understood, furthermore, that whatever assets that may not have been reflected in the said balance sheet of UFC as of September 30, 2008, or may have been omitted therefrom for any reason whatsoever, as well as, all other assets which may come into its possession or to which it may be entitled after the aforesaid date and until the approval of the merger by the SEC shall be deemed included in the conveyance, assignment and transfer. All transactions, gains, losses of UFC after September 30, 2008 and before the Effective Merger Date, shall already be for the account of NAI.

3. Upon the Effective Merger Date, NAI shall be the surviving corporation and its corporate existence shall continue. NAI shall become the owner of all the rights, assets, privileges and other properties of UFC and shall assume all the debts and liabilities of UFC reflected in the audited balance sheet as of September 30, 2008 in the same manner as though NAI itself incurred such liabilities and obligations and any such claim or action or proceeding against UFC shall be prosecuted by or against NAI; Provided, however, that NAI may avail of all the defenses, rights, privileges, set-offs and counterclaims which UFC may have under the premises.

4. Upon the Effective Merger Date:

- a. NAI shall be deemed to have acquired all the assets and assumed all the liabilities of UFC. UFC shall confirm the conveyance of such assets to NAI as of the Effective Merger Date.

(PAGE 1 OF 2)
MARIANO L. CELIS II

Date: 13 FEB 2009

- b. The assets will be transferred at the net asset value of UFC as determined on the basis of the audited financial statements as of September 30, 2008.
- c. It is understood, however, that the above valuation and exchange shall be subject to whatever adjustments the SEC may make in order that it will approve the merger. Should this happen, the Parties shall execute such documents and do all acts as may be necessary to implement such adjustments.
5. For purposes of the merger, NAI shall no longer issue shares to itself, being the 100% shareholder of UFC.
6. The basis of the assets and properties transferred pursuant to this Plan of Merger shall be, in the hands of NAI, the same as it would have been in the hands of UFC.
7. UFC and its proper officers shall, from time to time, execute such documents and do such other or further acts, and take or cause to be taken such actions as may be necessary, to fully effect the merger, or which NAI may deem reasonably necessary or desirable in order to vest in and confirm to NAI title to and possession of the rights, privileges, property, assets and business of UFC, and otherwise carry out the full intent and purposes of the merger.
8. The Parties shall immediately take all necessary corporate acts to implement their merger, and shall cooperate with each other in obtaining all necessary regulatory filing, consents and approvals, as well as, in complying with all applicable regulatory rules and regulations.

IN WITNESS WHEREOF, this Plan of Merger has been signed by the respective representatives of NAI and the Absorbed Companies on this JAN 14 2009 at MANILA CITY, Philippines.

NUTRI ASIA, INC.

By:

EMMANUEL RAMON C. LORENZANA
President

UFC PHILIPPINES, INC.

By:

GENARO D. REYES
VP-Treasurer

13 FEB 2009

SIGNED IN THE PRESENCE OF:

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)

QUEZON CITY

) S.S.

QUEZON CITY

BEFORE ME, a Notary Public for and in _____ this day of _____ personally appeared the following:

14 JAN 2009

NameIdentification DocumentEmmanuel Ramon
C. Lorenzana

Tax Identification No. 101-777-042

Genaro D. Reyes

Tax Identification No. 131-020-062

all known to me and to me known to be the same persons who executed the foregoing instrument and they acknowledged to me that the same is their own free and voluntary acts and deeds as well as that of the corporation therein represented.

This instrument consisting of four (4) pages including this page wherein this acknowledgment clause is written refers to a Plan of Merger signed by the parties and their instrumental witnesses on each and every page thereof.

WITNESS MY HAND AND SEAL on the date and at the place first above written.

ATTY. JOEL G. GORDOLA

NOTARY PUBLIC

UNTIL DECEMBER 31, 2009

PTR No. 08063624705/09 A.C.

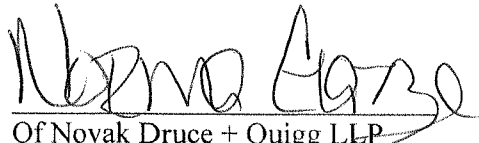
IBP No. 688766 ROLL No. 25103.

Doc. No. 193;
Page No. 39;
Book No. 15;
Series of 2009.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing CONSENT MOTION
TO CORRECT NAME OF PETITIONER was served by mailing said copy on November
8, 2010 via First Class Mail, postage prepaid to:

Ilene B. Tannen
Stephen F. Kampmeier
JONES DAY
222 East 41st Street
New York, NY 10017-6702


Of Novak Druce + Quigg LLP